

# EXHIBIT D

Vito, Robert - Vol. II  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

VOLUME II

IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:  
PRICE LITIGATION : 01-CV-12257-PBS  
:  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-A-Care of :  
the Florida Keys, Inc. v. :  
Abbott Laboratories, Inc. :  
No. 06-CV-11337-PBS :

- - -

Continuation of the videotaped  
deposition of ROBERT VITO was taken, pursuant  
to notice, at MORGAN LEWIS & BOCKIUS, LLP,  
1701 Market Street, Philadelphia,  
Pennsylvania, on Wednesday, June 20, 2007,  
beginning at 8:43 a.m., before M. Kathleen  
Muino, Professional Shorthand Reporter, Notary  
Public; Michael Hunterton, Certified Legal  
Video Specialist, there being present:

Henderson Legal Services  
202-220-4158

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<p>1 MR. TORBORG: I'm just about done.</p> <p>2 THE VIDEOGRAPHER: -- get an operator on</p> <p>3 the phone?</p> <p>4 MR. McDONALD: Well, yeah, but, David,</p> <p>5 it's going to terrible. Why don't you just mute it</p> <p>6 or something? It's going to be worthless to have</p> <p>7 the video and not -- I mean, I can hear the</p> <p>8 feedback back here. Just mute the conference call.</p> <p>9 ---</p> <p>10 (Whereupon, the telephone was muted.)</p> <p>11 ---</p> <p>12 BY MR. TORBORG:</p> <p>13 Q. And do you recall who it was that made</p> <p>14 the comment at the hearing?</p> <p>15 A. I don't recall, but I do believe that</p> <p>16 that was mentioned at -- at the -- at the hearing.</p> <p>17 It might have been GAO or it might have been -- I</p> <p>18 don't know exactly who it was, but there is a</p> <p>19 record of the hearing. I believe it was in -- in</p> <p>20 2001, either September or October.</p> <p>21 Q. Was that concept ever discussed at the</p> <p>22 state pharmacy association meetings that you</p>	<p>1 inadequate payment for services?</p> <p>2 MR. NEAL: You can answer that consistent</p> <p>3 with my previous instruction on privileged</p> <p>4 communications with HCFA officials.</p> <p>5 THE WITNESS: I think it --</p> <p>6 MR. AZORSKY: Objection to form.</p> <p>7 THE WITNESS: I think it was -- in our</p> <p>8 later reports, we mention that in the conclusion or</p> <p>9 the recommendation, so I think there was -- that</p> <p>10 was definitely, I believe, in a public document</p> <p>11 from the OIG.</p> <p>12 BY MR. TORBORG:</p> <p>13 Q. With -- without revealing to me the</p> <p>14 substance of the communications, was that a -- a</p> <p>15 topic that was discussed at the exit conferences</p> <p>16 that you had with HCFA?</p> <p>17 MR. NEAL: You can answer that question</p> <p>18 yes or no.</p> <p>19 THE WITNESS: Hmph.</p> <p>20 MR. NEAL: Or I -- or I don't remember.</p> <p>21 MR. AZORSKY: Objection to form.</p> <p>22 THE WITNESS: I don't remember.</p>
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<p>1 attended?</p> <p>2 A. The -- the -- again, you're talking</p> <p>3 about the Medicare context of -- and then the other</p> <p>4 -- the state representatives are the Medicaid. So</p> <p>5 I believe that the Medicaid, we mainly talked about</p> <p>6 the AWP issues. We did not -- in our reports, we</p> <p>7 did not talk about the Medicare issues with them</p> <p>8 unless it had to do with J codes, in which they</p> <p>9 were being billed to the Medicaid program.</p> <p>10 Q. Do you recall discussions at the state</p> <p>11 pharmaceutical meetings that you attended that the</p> <p>12 payment for ingredient costs would subsi --</p> <p>13 subsidize an insufficient dispensing fee?</p> <p>14 MR. NEAL: Objection as to form.</p> <p>15 THE WITNESS: I -- I think there has</p> <p>16 always been questions about the dispensing fee and</p> <p>17 if it's proper or not, so there probably was some</p> <p>18 discussions about that.</p> <p>19 BY MR. TORBORG:</p> <p>20 Q. And do you recall any conversations with</p> <p>21 HCFA relating to the Medicare side about whether or</p> <p>22 not the payment for ingredient cost would subsidize</p>	<p>1 MR. TORBORG: Why don't we break for the</p> <p>2 day.</p> <p>3 MR. NEAL: That's fine.</p> <p>4 MR. TORBORG: Thank you very much, Mr.</p> <p>5 Vito, for your time.</p> <p>6 THE VIDEOGRAPHER: The time is 4:34 p.m.</p> <p>7 We're going off the record, concluding this day's</p> <p>8 testimony, consisting of six tapes in the</p> <p>9 deposition of Robert Vito, in the matter of In Re:</p> <p>10 Pharmaceutical Average Wholesale Price Litigation.</p> <p>11 This -- this day of testimony consists of six tapes</p> <p>12 and will be held by Henderson Legal Services of</p> <p>13 Washington, DC.</p> <p>14 ---</p> <p>15 (Whereupon, the deposition adjourned at</p> <p>16 4:35 p.m.)</p> <p>17 ---</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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